

# Real Property Disposition: Overview and Issues for the 112<sup>th</sup> Congress

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## Summary

Federal executive branch agencies hold an extensive real property portfolio that includes nearly 900,000 buildings and structures, and 41 million acres of land worldwide. These assets have been acquired over a period of decades to help agencies fulfill their diverse missions. The government's portfolio encompasses properties with a range of uses, including barracks, health clinics, warehouses, laboratories, national parks, boat docks, and offices. As agencies' missions change over time, so, too, do their real property needs, thereby rendering some assets less useful or unneeded altogether.

Real property disposition is the process by which federal agencies identify and then transfer, donate, or sell facilities and land they no longer need. Disposition is an important asset management function because the costs of maintaining unneeded properties can be substantial, consuming billions of dollars that might be applied to pressing real property needs, such as acquiring new space and repairing existing facilities, or to other policy issues, such as reducing the national debt.

Audits of agency real property portfolios have found that the government holds thousands of unneeded properties, and must spend hundreds of millions of dollars annually to maintain them. Agencies have said that their disposal efforts are often hampered by legal and budgetary disincentives, and competing stakeholder interests. In addition, Congress is limited in its capacity to conduct oversight of the disposal process because it lacks access to reliable, comprehensive real property data. The government's inability to efficiently dispose of its unneeded property is a major reason that federal real property management has been identified by the Government Accountability Office (GAO) as a "high-risk" area since 2003.

This report begins with an explanation of the real property disposal process, and then discusses some of the factors that have made disposition inefficient and costly. It then examines real property legislation introduced in the 111<sup>th</sup> Congress that would have addressed those problems, including the Federal Real Property Disposal Enhancement Act of 2009 (H.R. 2495), S.Amdt. 1042, and the President's FY2011 budget request. The report concludes with policy options for enhancing both the disposal process and congressional oversight of it.

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## Introduction

Federal executive branch agencies hold an extensive real property portfolio that includes nearly 900,000 buildings and structures, and 41 million acres of land worldwide.<sup>1</sup> These assets have been acquired over a period of decades to help agencies fulfill their diverse missions. Agencies hold properties with a range of uses, including barracks, health clinics, warehouses, laboratories, national parks, boat docks, and offices. As agencies' missions change over time, so, too, do their real property needs, thereby rendering some assets less useful or unneeded altogether. Healthcare provided by the Department of Veterans Affairs (VA), for example, has shifted in recent decades from predominately hospital-based inpatient care to a greater reliance on clinics and outpatient care, with a resulting change in space needs.<sup>2</sup> Similarly, the Department of Defense (DOD) reduced its force structure by 36% after the cold war ended, and has engaged in several rounds of base realignments and installation closures.<sup>3</sup>

Real property disposition is the process by which federal agencies identify and then transfer, donate, or sell facilities and land they no longer need. Disposition is an important asset management function because the costs of maintaining unneeded properties can be substantial, consuming financial resources that might be applied to pressing real property needs, such as acquiring new space and repairing existing facilities, or towards other pressing policy issues, such as reducing the national debt.

Audits of agency real property portfolios have found that the government holds thousands of unneeded properties, and must spend hundreds of millions of dollars annually to maintain them. Agencies have said that their disposal efforts are often hampered by legal and budgetary disincentives, and competing stakeholder interests. In addition, Congress is limited in its capacity to conduct oversight of the disposal process because it lacks access to reliable, comprehensive, real property data. The government's inability to efficiently dispose of its unneeded property is a major reason that federal real property management has been identified by the Government Accountability Office (GAO) as a "high-risk" area since 2003.

This report begins with an explanation of the real property disposal process, and then discusses some of the factors that have made disposition inefficient and costly. It then examines real property legislation introduced in the 111<sup>th</sup> Congress that would have addressed those problems and concludes with policy options for enhancing both the disposal process and congressional oversight of it.

## Overview of the Disposition Process

The Federal Real Property and Administrative Services Act of 1949 (Property Act) applies to real property held by most federal agencies.<sup>4</sup> The Property Act authorizes the General Services

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<sup>1</sup> These figures do not include real property owned by the federal judicial or legislative branches. Federal Real Property Council, *FY2008 Federal Real Property Report: An Overview of the U.S. Federal Government's Real Property Assets*, August 2009, p. 9.

<sup>2</sup> U.S. Government Accountability Office, *Federal Real Property: Progress Made in Reducing Unneeded Property, but VA Needs Better Information to Make Further Reductions*, GAO-08-939, September 2008, p. 9.

<sup>3</sup> U.S. Government Accountability Office, *Federal Real Property: Excess and Underutilized Property is an Ongoing Problem*, GAO-06-248, February 2006, p. 3. For more information, see CRS Report R40476, *Base Realignment and Closure (BRAC): Transfer and Disposal of Military Property*, by R. Chuck Mason.

<sup>4</sup> 40 U.S.C. § 101 et. seq. Land reserved for national forest or national park purposes, and Bureau of Land Management

Administration (GSA) to dispose of real property that agencies no longer need, although some agencies have been granted the authority to dispose of their own property.<sup>5</sup> Agencies without independent disposal authority generally follow the process described in this section.

## Federal Transfer

In order to identify properties that agencies no longer need, each agency is required to conduct an annual survey of its real property holdings. Properties that are no longer needed are reported to GSA as “excess.”<sup>6</sup> GSA then physically inspects each excess property, and hires a licensed appraiser to evaluate its fair market value.<sup>7</sup> Next, GSA sends a written Notice of Availability describing the property to other federal agencies, and posts information about the property on its Property Disposal Resource Center website.<sup>8</sup> Agencies may also identify unneeded assets available for transfer through the Federal Real Property Profile (FRPP), a database of the buildings, structures, and land held by federal agencies.<sup>9</sup> If an agency wants to acquire an excess property, it must respond to the Notice of Availability within 30 days, and then submit a formal request for the property to be transferred within 60 days from the date the notice expires. Agencies are required to pay fair market value to acquire excess property, although there are a number of circumstances under which an exception to this requirement may be approved.<sup>10</sup>

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properties, are not covered by these disposal rules. Other legislation that governs federal agency real property disposal includes the National Historic Preservation Act (16 U.S.C. § 470 et. seq.), which establishes guidelines for agency disposition of historic properties, and the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. § 11411), which requires agencies to make surplus real property available first for homeless use before making it available for other purposes. In addition, Executive Order 13327, signed in 2004 by President George W. Bush, established (1) Senior Real Property Officers (SRPOs) at 24 of the largest landholding agencies to monitor and manage their agencies’ real property, (2) a Federal Real Property Council, comprised of SRPOs, to evaluate agency real property policies and practices, and (3) the Federal Real Property Profile, a database with information on agency real property holdings, including disposition data.

<sup>5</sup> The Department of Defense has the authority to dispose of unneeded real property that is subject to the Base Realignment and Closure (BRAC) process, but GSA disposes of non-BRAC real property. The United States Postal Service has the authority to dispose of all of its real property. The Departments of State, Veterans Affairs, Education, Health and Human Services, the Interior, and Agriculture also have the authority to dispose of some unneeded real property, although the scope of that authority varies widely.

<sup>6</sup> 40 U.S.C. § 102.

<sup>7</sup> U.S. General Services Administration, *Customer Guide to Real Property Disposal*, p. 17, at [http://www.missionumatilla.com/documents/historical\\_data/HD0013\\_PropertyDisposalClosureGuide\\_GSA.pdf](http://www.missionumatilla.com/documents/historical_data/HD0013_PropertyDisposalClosureGuide_GSA.pdf).

<sup>8</sup> The Office of Real Property Utilization and Disposal website address is <https://extportal.pbs.gsa.gov/ResourceCenter/viewproperties.do?noticetype=1>.

<sup>9</sup> Only the 24 federal agencies are required to report their real property data annually to the FRPP, although other agencies have the option of reporting. The agencies that are required to report are the Departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Homeland Security, Housing and Urban Development, the Interior, Justice, Labor, State, Transportation, the Treasury, and Veterans Affairs; Environmental Protection Agency; General Services Administration; National Aeronautics and Space Administration; National Science Foundation; Nuclear Regulatory Commission; Office of Personnel Management; Small Business Administration; Social Security Administration; and United States Agency for International Development.

<sup>10</sup> See 41 CFR § 102-75.1275; 41 CFR §§ 102-75.190-102-75.225; and 40 U.S.C. § 522. When an agency is required to pay fair market value for a property, the government does not realize any new revenue since the funds are being transferred from another federal agency.

## Public Benefit Conveyance

If no federal agency wants an unneeded property, then it is declared “surplus,” and it is made available to state and local governments, and non-profits.<sup>11</sup> These entities may have surplus property transferred to them for a discount of up to 100% of fair market value, provided they use the property for a public benefit.<sup>12</sup> This type of transfer is called a public benefit conveyance, and to qualify, the property must be used for one of the following purposes (not listed in order of preference):

- Homeless services
- Corrections
- Law enforcement
- Public health
- Drug rehabilitation
- Education
- Parks and recreation
- Seaport facilities
- Wildlife conservation
- Highways
- Emergency Management Response
- Historic monuments
- Public airports
- Housing

Each public benefit category has a federal agency, called a sponsor, that oversees conveyances for that purpose. Generally, sponsoring agencies have expertise in the policy areas they sponsor. The Federal Aviation Administration, for example, is the sponsoring agency for public airport conveyances.<sup>13</sup>

Pursuant to Title V of the McKinney-Vento Homeless Assistance Act, surplus properties must be made available for serving the homeless before being made available for other public benefit uses.<sup>14</sup> The Department of Housing and Urban Development (HUD) is responsible for reviewing surplus property to determine if it is suitable for homeless use. If a property is determined to be unsuitable for homeless use, then it becomes available for other public uses at that time. If HUD determines a surplus property is suitable, however, it publishes a notice to that effect in the *Federal Register*. State and local governments, and non-profits, are given 60 days to notify the sponsoring agency, the Department of Health and Human Services (HHS), that they are interested

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<sup>11</sup> 40 U.S.C. § 102.

<sup>12</sup> 40 U.S.C. § 549.

<sup>13</sup> 40 U.S.C. § 550. The agencies that sponsor conveyances are the Departments of Education (education), Health and Human Services (public health, homeless services), the Interior (parks and recreation, historic monuments, wildlife conservation), Justice (correctional), Transportation (port facility), Housing and Urban Development (housing), Justice (law enforcement), Homeland Security (emergency management response), and the Federal Aviation Authority (public airports).

<sup>14</sup> 42 U.S.C. 11411.

in using the property for serving the homeless.<sup>15</sup> If HHS receives an expression of interest within the 60-day window, the property may not be made available for any other purpose until action on the request is complete. If no interest is expressed, then the property becomes available for other public benefit uses.<sup>16</sup> GSA advertises its availability by contacting state and local officials, and known non-profits with an interest in the property. GSA may also post notices in city halls, state capitols, and other appropriate locations.<sup>17</sup> The sponsoring agency is generally responsible for distributing, reviewing, and approving applications; conveying the property to the recipient; and monitoring the use of the property after it has been transferred, although GSA assists some agencies with these duties.<sup>18</sup> If the recipient of a conveyed property fails to use the property as agreed—by building a retail center on property conveyed for a public park, for example—then the property may revert back to the federal government.

## Negotiated Sale

Surplus property that is not disposed of through the public benefit conveyance process may be sold to state and local governments at fair market value.<sup>19</sup> In essence, state and local governments are given the right of first refusal—they are allowed an opportunity to purchase surplus property before the property is offered for sale to the general public. Federal real property regulations permit negotiated sales when “a public benefit, which would not be realized from a competitive sale, will result from the negotiated sale.”<sup>20</sup> The regulations do not specify what types of activities would qualify, but GSA guidance notes that a state or local government can use property “according to its own redevelopment needs,” including economic development.<sup>21</sup>

## Public Sale

Surplus properties that are still available after screening for public benefit conveyance and negotiated sale may be offered for public sale. The property is advertised in local newspapers, regional or national publications, and the U.S. Real Estate Sales list, and may also be found on GSA’s website.<sup>22</sup> The appraised value of a property is used as a guideline for initial pricing, and properties are sold through sealed bids, physical auctions, and Internet auctions.<sup>23</sup>

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<sup>15</sup> 41 CFR § 102-75.1200.

<sup>16</sup> Conveyances, other than McKinney Act transfers, are at the discretion of the agency and are not required by statute.

<sup>17</sup> U.S. General Services Administration, *Surplus Real Property Available for Public Use: Notification Procedure*, GSA website, at [http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA\\_BASIC&contentId=20146](http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA_BASIC&contentId=20146).

<sup>18</sup> U.S. General Services Administration, *Customer Guide to Real Property*, p. 25. The General Services Administration is responsible for deeding, conveyance, and compliance monitoring of correctional, law enforcement, and emergency management conveyances, and for just deeding and conveyance of properties to be used for historic monuments, or public airports.

<sup>19</sup> 41 CFR § 102-75.880(d); 40 U.S.C. § 545.

<sup>20</sup> *Ibid.*

<sup>21</sup> U.S. General Services Administration, Office of Real Property Utilization and Disposal, “How to Acquire Federal Property,” at <https://extportal.pbs.gsa.gov/ResourceCenter/content/acquireFedProp.do>.

<sup>22</sup> General Services Administration, Office of Real Property Utilization and Disposal, Current Sales webpage, at <https://extportal.pbs.gsa.gov/ResourceCenter/PRHomePage/loadPRHomePage.do?type=full>.

<sup>23</sup> General Services Administration, *Customer Guide to Real Property Disposal*, p. 27.

## Obstacles to Efficient Disposition

According to GAO, weaknesses in the disposition process have left the government with a large inventory of unneeded properties.<sup>24</sup> The most recent comprehensive data available showed that the government held nearly 22,000 excess and surplus properties in 2007.<sup>25</sup> While government-wide data are not available on the cost of maintaining unneeded properties, audits have shown these costs to be a substantial expense for some agencies. GAO auditors estimated, for example, that the VA spent \$175 million on operating and maintaining unneeded facilities in 2007,<sup>26</sup> and that DOD spent between \$3 billion and \$4 billion dollars in 2003 to maintain facilities that were not needed.<sup>27</sup> Agencies have said that the financial and administrative burdens associated with disposition have hindered their efforts to transfer, convey, and sell their unneeded properties, and that competing stakeholder interests may delay or halt disposal of some properties altogether. In addition, the quality of data available to real property managers for strategic decision making has been called into question. Each of these issues is discussed below.

## Budgetary Disincentives

Federal agencies frequently cite the cost of complying with environmental regulations as a major disincentive to disposal. Generally speaking, agencies are required to assess and pay for any environmental cleanup that may be needed before disposing of a property. Identifying and addressing environmental hazards, such as lead paint, asbestos, medical waste, and soil contamination, prior to disposition can result in “significant” up-front costs for agencies.<sup>28</sup> Some agencies must complete expensive repairs and renovations before disposing of certain properties, like repairs to meet health and safety standards, or to restore historic sites in accordance with federal standards. VA, for example, estimated that it would need to spend about \$3 billion to repair the buildings in its portfolio that it rated in “poor” or “critical” condition—56% of which were vacant or underutilized, and therefore would be candidates for disposal.<sup>29</sup> Agencies that wish to demolish vacant buildings and structures face deconstruction and cleanup costs that, at times, exceed the cost of maintaining the property—at least in the short run—which may encourage real property managers to retain the property rather than dispose of it.<sup>30</sup>

These problems are compounded by the fact that, historically, agencies have not been able to recoup the costs of disposition by retaining the proceeds resulting from the sale of a property. In recent years, some agencies have been granted the authority to retain net proceeds, to varying

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<sup>24</sup> U.S. Government Accountability Office, *High-Risk Series: Federal Real Property*, GAO-03-122, January 2003, p. 4.

<sup>25</sup> Office of Management and Budget, *Response to Section 408 of P.L. 109-396*, June 15, 2007, p. 2. GSA publishes an annual real property report, but that report does not identify the number of excess and surplus properties held by federal agencies.

<sup>26</sup> U.S. Government Accountability Office, *Federal Real Property: Progress Made in Reducing Unneeded Property, but VA needs Better Information to Make Further Reductions*, GAO-08-939, September 2008, p. 4.

<sup>27</sup> U.S. Government Accountability Office, *Federal Real Property: Excess and Underutilized Property Is an Ongoing Problem*, GAO-06-258, February 2006, p. 6.

<sup>28</sup> U.S. Government Accountability Office, *Federal Real Property: Progress Made Toward Addressing Problems, but Underlying Obstacles Continue to Hamper Reform*, GAO-07-349, April 13, 2007, p. 40.

<sup>29</sup> U.S. Government Accountability Office, *Federal Real Property: Progress Made in Reducing Unneeded Property, but VA needs Better Information to Make Further Reductions*, GAO-08-939, September 2008, p. 5.

<sup>30</sup> U.S. Government Accountability Office, *Federal Real Property: Progress Made Toward Addressing Problems, but Underlying Obstacles Continue to Hamper Reform*, GAO-07-349, April 13, 2007, pp. 40-41.



degrees.<sup>31</sup> There is wide support for this policy among agency real property officials: GAO interviewed officials at the 10 largest landholding agencies and found that nearly all of the officials that had the authority considered it to be “a strong incentive to sell real property,” and those that did not have that authority wanted it.<sup>32</sup>

## **Administrative Burden**

Agencies have also argued that disposal regulations create an administrative burden that delays disposition and drives up costs even further. Some agencies have noted that the need to screen properties for homeless use, as required by the McKinney-Vento Act, slows down the disposition process unnecessarily in some cases. The Department of Energy, for example, told auditors that they had properties that they felt could be disposed of only by demolition, due to their condition or location, but that still had to go through the homeless screening process. VA officials have said the requirements of the McKinney-Vento Act can add as much as two years to the disposal process, during which time maintenance costs continue to be incurred.<sup>33</sup> Similarly, it may take agencies years of study to assess the potential environmental consequences of a proposed disposal, and to develop and implement an abatement plan.<sup>34</sup> Agencies also say it takes longer to dispose of historic properties, because the National Historic Preservation Act requires them to plan their disposal actions so as to minimize the harm they cause to the historic property, which may include time-consuming procedures such as consulting with historic preservation groups at the state, local, and federal level.<sup>35</sup>

## **Stakeholder Conflict**

Some agencies have found their disposal efforts complicated by the involvement of stakeholders with competing agendas. In 2002, for example, the United States Postal Service (USPS) identified a number of “redundant, low-value” facilities that it sought to close in order to reduce its operating costs.<sup>36</sup> As part of the facility closure process, USPS was required to formally announce its intention to close each facility and solicit comments from the community.<sup>37</sup> USPS ultimately abandoned its plans to close many facilities it identified—including post offices that were underutilized, in poor condition, or not critical to serving their geographic areas—in part due to political pressure from stakeholders.<sup>38</sup> The Department of the Interior has said that it can be stymied by the competing concerns of local and state governments, historic preservation offices, and other political factors, when attempting to dispose of some of its unneeded real property.<sup>39</sup>

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<sup>31</sup> U.S. Government Accountability Office, *Federal Real Property: An Update on High-Risk Issues*, GAO-09-801, July 15, 2009, p. 18.

<sup>32</sup> *Ibid.*, p. 19.

<sup>33</sup> U.S. Government Accountability Office, *Federal Real Property: Progress Made in Reducing Unneeded Property, but VA needs Better Information to Make Further Reductions*, GAO-08-939, September 2008, p. 39.

<sup>34</sup> U.S. Government Accountability Office, *High-Risk Series: Federal Real Property*, GAO-03-122, January 2003, p. 41.

<sup>35</sup> U.S. Government Accountability Office, *Federal Real Property: DHS Has Made Progress, but Additional Actions Are Needed to Address Real Property Management and Security Challenges*, GAO-07-658, June 2007, p. 42.

<sup>36</sup> U.S. Government Accountability Office, *U.S. Postal Service Facilities: Improvements in Data Would Strengthen Maintenance and Alignment of Access to Retail Services*, December 2007, GAO-08-41 p. 39.

<sup>37</sup> *Ibid.*

<sup>38</sup> U.S. Government Accountability Office, *Federal Real Property: An Update on High-Risk Issues*, GAO-09-801, July 15, 2009, p. 15.

<sup>39</sup> *Ibid.*, p. 16.

Similarly, VA has found that communities sometimes oppose disposals that would result in new development, and veterans groups have opposed disposing of building space if that space would be used for purposes unrelated to the needs of veterans.<sup>40</sup> The Department of State has had difficulty in disposing of surplus real property overseas, due to disputes with host governments that restrict property sales.<sup>41</sup> These conflicts can result in delay, or even cancellation of proposed disposals, which, in turn, prevents agencies from reducing their expenditures on unneeded properties.

## Concerns with Real Property Data

The Federal Real Property Profile (FRPP) is the government's most comprehensive source of information about real property under the control of executive branch agencies. GSA manages the FRPP and is authorized to collect real property data from 24 of the largest landholding agencies each year (other agencies are encouraged, but not required, to report data to GSA).<sup>42</sup> The data elements that participating agencies collect and report are determined by the Federal Real Property Council (FRPC), an interagency taskforce which is funded and chaired by the Office of Management and Budget (OMB). The other members of the council are agency Senior Real Property Officers (SRPOs) and GSA.

The FRPP contains data that could enhance congressional oversight of federal real property activities, such as the number of excess and surplus properties held by major landholding agencies, the annual costs of maintaining those properties, and agency disposition actions. GSA, however, maintains tight control over access to the FRPP, and does not permit direct access to the public and most federal employees, including congressional staff. GSA does consider requests for real property data from congressional offices, but GSA staff query the database and provide the results to the requestor.

Some FRPP data are made public through an annual summary report posted on GSA's website, but the summary reports are of limited use for several reasons.<sup>43</sup> Most of the data are highly aggregated (e.g., the number of assets disposed through public benefit conveyance government-wide), and very limited information is provided on an agency-by-agency basis. It is not possible, therefore, for Congress to monitor the performance of individual agencies through the summary reports. Basic questions, such as how many excess properties each agency disposed of in a given fiscal year, and by what method, cannot be answered. Nor is it possible to compare the performance of agencies, which in turn limits the ability of Congress to study the policies and practices at the most successful agencies and hold poorly performing agencies accountable.

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<sup>40</sup> U.S. Government Accountability Office, *Federal Real Property: Progress Made in Reducing Unneeded Property, but VA needs Better Information to Make Further Reductions*, GAO-08-939, September 2008, p. 5.

<sup>41</sup> U.S. Government Accountability Office, *High-Risk Series: Federal Real Property*, GAO-03-122, January 2003, p. 40.

<sup>42</sup> Executive Order 13327, "Federal Real Property Asset Management," 69 *Federal Register* 5897, February 4, 2004. According to the provisions of E.O. 13327, only the 24 agencies listed in 31 U.S.C. 901(b)(1) and (b)(2) are required to report real property data to GSA. Those agencies are the Departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Homeland Security, Housing and Urban Development, the Interior, Justice, Labor, State, Transportation, the Treasury, and Veterans Affairs; Environmental Protection Agency; General Services Administration; National Aeronautics and Space Administration; National Science Foundation; Nuclear Regulatory Commission; Office of Personnel Management; Small Business Administration; Social Security Administration; and United States Agency for International Development.

<sup>43</sup> The annual real property summary reports may be found on GSA's Federal Real Property Report Library website, at [http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA\\_BASIC&contentId=23962](http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA_BASIC&contentId=23962).

Also, the quality of the FRPP data has been questioned. GAO audits have found, for example, that certain real property data were incomplete or were not comparable across agencies, which limited the usefulness of those data for decision making.<sup>44</sup> In addition, the reports may miscategorize important data on disposal methods. The two most recently published FRPPs identify “other” as the most common disposition method, accounting for 46% (16,028) of the total number of real property assets disposed by agencies in FY2007 and nearly 73% (17,939) of those disposed in FY2008.<sup>45</sup> Typically, the “other” data category is reserved for a relatively small number of cases that do not clearly fit into one of the major data categories, so it is unusual to see such a large number of “other” dispositions. In fact, the FRPP defines “other” disposals as those “that cannot be classified in any of the other disposition methods,” so the relatively large percentage of “other” dispositions may reflect misreporting by agencies.<sup>46</sup> If so, then the data reported for all types of dispositions may be of little use, because thousands of properties may have been miscategorized.

The summary reports also omit data that Congress might find valuable. The FRPP contains, for example, the number of excess properties held by each agency and the annual operating costs of those properties—issues about which Congress has expressed ongoing interest—but the summary report only provides the number and annual operating costs of disposed assets, thereby providing the “good news” of future costs avoided through disposition while omitting the “bad news” of the ongoing operating costs associated with unneeded properties the government maintained. Similarly, agencies estimate a dollar amount for the repair needs of their buildings and structures as part of their FRPP reporting, but the estimate is then folded into a formula for calculating a “condition index” for each building.<sup>47</sup> Given that repair needs are an obstacle to disposing of some properties, Congress may find it useful to have the repair estimates reported separately to help inform funding decisions.

## Select Real Property Proposals

### H.R. 2495

Congress has shown an ongoing interest in real property disposal reform, and in the 111<sup>th</sup> Congress, Representative Dennis Moore introduced H.R. 2495, the Federal Real Property Disposal Enhancement Act of 2009.<sup>48</sup> Among the major provisions of the bill, GSA would have been required to submit an annual report to Congress that included information on the number, market value, and deferred maintenance costs of all executive branch real property assets.<sup>49</sup> For surplus properties, the report would have also included ongoing maintenance costs, and, for

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<sup>44</sup> U.S. Government Accountability Office, *Federal Real Property: An Update on High-Risk Issues*, GAO-09-801, July 15, 2009, p. 10.

<sup>45</sup> Federal Real Property Council, *FY2008 Federal Real Property Report: An Overview of the U.S. Federal Government's Real Property Assets*, August 2009, p. 24.

<sup>46</sup> Ibid.

<sup>47</sup> U.S. General Services Administration, Office of Governmentwide Policy, *FY2008 Federal Real Property Report*, August 2009, p. 30.

<sup>48</sup> H.R. 2495 was introduced May 19, 2009. Representatives Duncan, Boyd, and Hill cosponsored the bill. It was ordered to be reported by the House Oversight and Government Reform Committee on September 10, 2009. No further action on the bill has been taken.

<sup>49</sup> Deferred maintenance costs are generally considered to be the cost of repairs needed to bring a property to current standards.

surplus properties that had been disposed of, the report would have provided the size, location, market value, and method of disposal used. All of the data would have been “set forth government-wide, and by agency, and for each at the constructed asset level and at the facility/installation level.” This would have required reporting for individual buildings, parcels of land, and structures.

H.R. 2495 would have provided new financial resources for agency disposal activities. The bill would have allowed agencies to retain the net proceeds from the disposition of real property, and to use those funds, as authorized by Congress, for real property activities, including the maintenance, repair, and disposal of other properties.<sup>50</sup> The bill would also have given GSA the authority to pay for the costs of preparing properties held by other agencies for disposal, and then required agencies to reimburse GSA from the proceeds of the sale of the property.

In addition, the bill would have established a demonstration program that would exempt certain properties from the McKinney-Vento Act—primarily buildings and structures that, due to their condition or location, would not likely be approved for homeless use—so that they may be demolished without being delayed by the act’s homeless screening requirements.

Other provisions in H.R. 2495 would have required GSA to issue recommendations to executive agencies on how to identify excess property, how to evaluate the costs and benefits of disposition, how to prioritize disposal decisions, and how to best dispose of excess property. Executive agencies, for their part, would have been required to ensure that they were identifying, reporting, and disposing of excess property as promptly as possible. Agencies would have been further required to establish “goals and incentives” for reducing excess real property in their inventories.

## **S.Amdt. 1042**

On May 5, 2009, Senator Tom Coburn introduced S.Amdt. 1042, which would have established a pilot program to expedite disposition of unneeded properties.<sup>51</sup> The amendment, which was ruled out of order, would have applied to all landholding agencies, and the pilot program would have terminated five years after the amendment was enacted. The amendment would have required the Director of OMB to select properties for the pilot program that were deemed excess, surplus, “underperforming,” or “otherwise not meeting the needs” of the government, as defined by the Director.<sup>52</sup> Information about the selected properties—including their suitability for homeless use—would have been posted on a publicly accessible website. The Secretary of Housing and Urban Development would have been required to review the properties selected for the pilot program by the OMB Director, and determine whether each one was suitable for homeless use. If a property was determined to be suitable for homeless use, it would have been made available to state and local government agencies, and non-profit organizations that provide services to the homeless. If a property was determined to be unsuitable for homeless use, or if the property was deemed suitable but it was not conveyed to a homeless serving entity, then it would have been eligible for expedited disposition. The expedited disposal process would have permitted agencies to demolish or sell properties at fair market value without first requiring those properties to be offered for public benefit conveyance (beyond homeless use screening, which they would have

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<sup>50</sup> The bill specifies that net proceeds from the sale of reverted property that had been conveyed for a public benefit would be deposited into GSA’s real property account.

<sup>51</sup> *Congressional Record*, vol. 156, no. 68 (May 5, 2009), S5164-S5166. Senator Coburn’s amendment would have amended S.Amdt. 1040, which in turn proposed to amend S. 896, the Helping Families Save Their Homes Act of 2009 (P.L. 111-22).

<sup>52</sup> The amendment did not define either the term “underperforming” or the phrase “not meeting the needs of the Federal Government.”

already completed). In addition, agencies would have been permitted to retain 20% of the net proceeds from the disposal of their properties (the remaining 80% would have been deposited into the Treasury as miscellaneous receipts), and those funds would have been available for real property capital improvements, such as repairs and renovations, as well as other disposal activities. The amendment would have required GAO to study the pilot program within three years of enactment and to report the results to Congress.

## **President Obama's FY2011 Budget Request**

The Administrations of Presidents George W. Bush and Barack Obama have both proposed real property disposal initiatives as part of their budget submissions. President Obama's FY2011 budget request included proposed language that was similar to the language in H.R. 2495 in several respects, including language that would require GSA to submit an annual real property report to Congress.<sup>53</sup> The real property report that the President proposed would have included data on the number and value of all real property held by federal agencies, reported government-wide, by agency, and at the facility or installation level. Deferred maintenance costs for agency real property would also have been reported at the government-wide and agency levels, but not by facility or installation. The report would have included data on the number, value, and ongoing maintenance costs associated with excess properties, reported government-wide and by agency. Data on surplus real property that is disposed of would also have been included in the report, including data on each property's location, size, value, and method of disposal used. For surplus properties demolished or disposed of through a public benefit conveyance, the report would have included an estimate of the net savings to the government that resulted from the disposal. It is not clear whether "value" referred to the estimated market value of a property, or its replacement value.

The President also proposed establishing a public website at GSA that would provide some data on federal real property holdings. At a minimum, the website would have provided the location, size, status (e.g., excess or surplus), and "mission criticality" of each property. The latter term appears to have been related to the "mission dependency" data GSA currently collects for the FRPP. A property is deemed mission critical, according to the FRPP data dictionary, if an agency's mission would be compromised without a particular constructed asset or parcel of land.<sup>54</sup> Properties may also be rated "mission dependent, but not critical" and "not mission dependent" in the FRPP. The proposal specifies that GSA may withhold information from the website if doing so would be in the best interest of the government or the public, or for national security reasons.

In addition, the President's proposal would have permitted agencies to retain net proceeds from the disposal of real property, and to use those funds, as authorized by Congress, for real property activities, including the maintenance, repair, and disposal of other properties.<sup>55</sup> The President's proposal would also have required, in a manner similar to the requirements of H.R. 2495, that executive agencies ensure that they were identifying, reporting, and disposing of excess property as promptly as possible, and that they establish "goals and incentives" for reducing excess real property in their inventories.

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<sup>53</sup> The White House, Office of Management and Budget, *Budget of the United States for Fiscal Year 2011*, Appendix, p. 16-17 (Washington: GPO, 2010).

<sup>54</sup> Federal Real Property Council, *2009 Guidance for Real Property Inventory Reporting*, July 14, 2009, p. 11, at [http://www.gsa.gov/graphics/ogp/2009\\_Guidance\\_for\\_Real\\_Property\\_Inventory\\_Reporting.pdf](http://www.gsa.gov/graphics/ogp/2009_Guidance_for_Real_Property_Inventory_Reporting.pdf).

<sup>55</sup> As with the language in H.R. 2495, the President's proposal specifies that net proceeds from the sale of reverted property that had been conveyed for a public benefit would be deposited into GSA's real property account.



The budget request would also have established a real property disposal pilot program. The President's proposal would have permitted agencies to recommend for the pilot program any "real property that is not meeting Federal Government needs," although the Director of OMB would have determined both the criteria for participation in the program and which properties were selected. The proposal would have attempted to expedite disposal by permitting properties to be offered for sale without being screened for public benefit conveyance, including homeless use. Properties sold under the pilot program must not obtain less than fair market value.

While President Obama may have needed legislation to establish the pilot program and to enable agencies to retain net proceeds, it appears other elements of his real property proposal might not have required congressional approval. The annual report and the public website, for instance, could have been implemented through executive action.

## Concluding Observations

The three proposals discussed in the previous section—H.R. 2495, S.Amdt. 1042, and the President's budget request—vary in their scope, authorities, and requirements, and so would have different consequences if enacted. **Table 1**, below, outlines how each proposal would have addressed the four obstacles to efficient real property disposition discussed in this report: budgetary disincentives, administrative burden, stakeholder conflict, and lack of access to comprehensive, accurate data.

**Table 1. How Select Legislative Proposals Address Obstacles to Efficient Disposition**

	H.R. 2495	S.Amdt. 1042	FY2011 Budget
Budgetary Disincentives	Agencies retain all of net proceeds from disposal	Agencies retain 20% of net proceeds from disposal	Agencies retain all of net proceeds from disposal
Administrative Burden	Properties in expedited demolition pilot program exempt from homeless use screening	Properties in expedited disposal pilot program exempt from most PBC screening requirements	Properties in expedited sale pilot program exempt from all PBC screening requirements
Stakeholder Conflict	Does not address	Does not address	Does not address
Data Concerns	Detailed data on all agency real property required in annual report	Basic data on pilot program properties posted online	Basic data on all agency real property posted online; detailed data reported annually

**Note:** PBC refers to Public Benefit Conveyance.

H.R. 2495 would have potentially enhanced the ability of agencies to dispose of unneeded properties by permitting them to retain the net proceeds from dispositions. It is not clear how much of an effect this provision would have had, however, because H.R. 2495 would have permitted agencies to use net proceeds for a range of real property activities—not just for the disposal of unneeded properties. An agency could have chosen, for example, to apply some or all of its net proceeds towards repairs at buildings the agency intends to continue to utilize, which would reduce the amount of funds available for disposition activities. Given that agency repair needs are in the billions, and net proceeds in FY2008 were \$134 million, the former could consume a large share of the latter, depending on agency priorities.<sup>56</sup> The pilot program established by H.R. 2495 would have potentially reduced the time it takes to dispose of one

<sup>56</sup> Federal Real Property Council, *FY2008 Federal Real Property Report: An Overview of the U.S. Federal Government's Real Property Assets*, August 2009, p. 24.

category of unneeded real property—buildings and structures scheduled for demolition—but it would not have included unneeded properties that would be disposed of by transfer, sale, or public benefit conveyance. In addition, the number of properties demolished under the pilot program may have been limited by the extent to which the cost of environmental cleanup acts as a disincentive. The annual report required by H.R. 2495 would have addressed many of the concerns about the current lack of comprehensive real property data, and it would provide useful information about properties the government no longer needs, including disposal actions. It is possible that GSA might have objected to the inclusion of each property’s estimated market value in the report, as it considers market information to be confidential.

Unlike H.R. 2495 and the President’s budget request, S.Amdt. 1042 would have permitted agencies to retain 20%, rather than all, of net proceeds. Using FY2008 net proceeds data, the amendment would have provided \$27 million for agency real property activities, government-wide, about \$107 million less than H.R. 2495 and the President’s proposal would have provided. The amendment’s expedited disposal program would have potentially reduced the administrative burden associated with disposing of most unneeded properties by exempting them from all public benefit conveyance requirements, other than screening for homeless use. State and local governments and non-profits might object to the pilot program, because by “skipping” most of the PBC process it would have reduced the number of federal properties they may obtain at a discount. On the other hand, state and local governments, and private firms, might support this type of pilot program because it would have increased the number of federal properties that could be purchased—and therefore be used for a wider range of purposes, including economic development, than if the property had been conveyed. The amendment would have required a limited set of data to be made available to the public, primarily information pertaining to the suitability of each property in the pilot program for homeless use.

If enacted, the President’s real property proposal would have provided access to all net disposal proceeds as a source of real property funding, although the effect of that funding on disposition cannot easily be estimated, because the proposal, like H.R. 2495, would not have limited the use of net proceeds to disposal activities. The President’s proposal would have reduced the administrative burden for all properties in the pilot program by exempting them from public benefit conveyance requirements, including homeless use. Opposition to the pilot program may have been found among some state and local government agencies, and non-profit organizations that prefer to have access to surplus federal property through public conveyance, and particularly among those agencies and non-profits that serve the homeless, because they had been given special consideration under McKinney-Vento. These exemptions could have cut months from the disposal process for many properties, however, thereby reducing maintenance costs and providing the government with the opportunity to realize revenues from the sale of properties sooner. The database proposed in the President’s budget would have had a broad scope—encompassing nearly all agency real property—but the data would have been primarily limited to descriptive information. In addition, agencies might have objected to having the mission criticality of their properties included in the database. It could be argued that identifying mission critical facilities on a public website, and providing the addresses of those facilities, is not in the interest of national security. The annual real property report proposed by the President’s would have addressed the need for increased data on agency excess and surplus properties and disposal actions, although it would not appear to have provided data on the cost of maintaining unneeded properties at the individual asset level (building, structure, or parcel of land).

None of the three proposals addressed stakeholder conflict. GAO has argued that stakeholder conflict might be reduced if agencies had an “independent apparatus” for making real property

disposal decisions.<sup>57</sup> GAO also suggested that the process by which the Department of Defense disposes of property under the Base Realignment Closure Act (BRAC) might serve as a model for civilian agencies seeking to diminish the effect of competing stakeholder interests, but it did not elaborate.<sup>58</sup>

## Enhanced Use Leases

It may not be possible for agencies to sell some unneeded properties, particularly when the real estate market is slow. Congress may therefore wish to consider whether to expand the authority of agencies to enter into Enhanced Use Leases (EULs). In broad terms, EULs are special authorities that permit agencies to enter into short- or long-term lease agreements with public and private entities for the use of federal property. VA has an EUL in New Jersey, for example, that has turned an underutilized property into an industrial park, and it leases unneeded space in Los Angeles on a short-term basis to the film industry.<sup>59</sup> Because EULs are typically provided to individual agencies, the scope of the authority they grant varies widely. Many agencies can retain the proceeds generated by EULs, for example, but others cannot.<sup>60</sup> Similarly, some agencies may use EUL proceeds for activities unrelated to real property, while others may apply them only to real property functions.<sup>61</sup> While EULs may provide revenue to agencies they may not otherwise realize, some agencies find the process of drafting, negotiating, and implementing an EUL agreement to be time consuming and complicated.<sup>62</sup> If Congress does consider expanding EUL authorities, among the issues it might choose to examine are whether to require congressional approval before EUL proceeds may be used by an agency, and whether to limit the use of proceeds to certain purposes (e.g., only disposal, any real property activity, any agency activity).

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<sup>57</sup> Government Accountability Office, *Federal Real Property: Excess and Underutilized Property is an Ongoing Problem*, GAO-06-248, February 2006, p. 10.

<sup>58</sup> Government Accountability Office, *Federal Real Property: An Update on High Risk Issues*, GAO-09-801, July 2009, p. 16.

<sup>59</sup> Government Accountability Office, *VA Real Property: VA Emphasizes Enhanced-Use Leases to Manage Its Real Property Portfolio*, GAO-09-776, June 2009, p. 3.

<sup>60</sup> Government Accountability Office, *Federal Real Property: Authorities and Actions Regarding Enhanced Use Leases and Sale of Unneeded Real Property*, GAO-09-283, February 17, 2009, p. 5.

<sup>61</sup> *Ibid.*, pp. 14-15.

<sup>62</sup> Government Accountability Office, *VA Real Property: VA Emphasizes Enhanced-Use Leases to Manage Its Real Property Portfolio*, GAO-09-776, June 2009, pp. 5-6.



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